

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CHRISTOPHER H. BROWN,)	Case No.
)	
Plaintiff,)	
)	
)	<u>COMPLAINT</u>
vs.)	
)	
UNITED STATES OF AMERICA,)	[Jury Trial Demanded]
)	
Defendant.)	
)	

Plaintiff, Christopher H. Brown, alleges against Defendant, United States of America, as follows:

NATURE OF THE ACTION

1. Plaintiff, Christopher H. Brown, brings this suit pursuant to 28 U.S.C. § 1346 (a)(1) and 26 U.S.C. § 7422(a) against Defendant seeking recovery of federal income tax and related interest erroneously assessed and collected from Plaintiff by Defendant for Plaintiff's taxable year ended December 31, 2016.

PARTIES

2. Plaintiff is an individual who resides at 16902 Harbor Master Cove, Cornelius, North Carolina 28031. The last four digits of his social security number are 0726.

3. Defendant is the United States of America.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1336(a)(1) and 26 U.S.C. § 7422(a).
 - a. On October 13, 2017, Plaintiff timely filed 2016 IRS Form 1040--U.S. Individual Income Tax Return with the Internal Revenue Service at Louisville, Kentucky (the “2016 Individual Return”). A copy of the 2016 Individual Return is attached hereto, marked Exhibit A and made a part hereof.
 - b. Plaintiff timely paid the total amount of federal income tax in the amount of \$164,206 shown on the 2016 Individual Return.
 - c. On October 7, 2020, Plaintiff timely filed a claim for refund of \$63,769 of federal income tax resulting from a research and development tax credit pursuant to 26 U.S.C § 41 in the amount of \$101,118 (the “Tax Credit”) that Plaintiff had not claimed on the 2016 Individual Return.
 - d. Plaintiff’s claim for refund was set forth on IRS Form 1040X--Amended U.S. Individual Income Tax Return for tax year 2016 filed with the Internal Revenue Service Center at Kansas City, Missouri for refund of federal income tax and interest paid for 2016 in the amount of \$63,769, together with interest as allowed by law (“Plaintiff’s Amended Return”). A copy of the Plaintiff’s Amended Return is attached hereto, marked Exhibit B and made a part hereof.
 - e. More than six months elapsed after Plaintiff filed the claim for refund without any action being taken by Defendant.

f. On or about August 22, 2022, Plaintiff received a letter from the U.S. Department of the Treasury, Internal Revenue Service dated August 17, 2022, which disallowed Plaintiff's claim for refund in its entirety (the "IRS Letter"). A copy of the IRS letter is attached hereto, marked Exhibit C and made a part hereof.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1402 (a)(1) because Plaintiff is an individual, who resides in Mecklenburg County, North Carolina.

FACTUAL ALLEGATIONS

6. Plaintiff filed an extension to allow him to file the 2016 Individual Return on or before October 15, 2017 (October 16, 2017 for the 2016 tax year) (the "Extension"). A copy of the Extension is attached hereto marked Exhibit D and made a part hereof.

7. On October 13, 2017, timely filed 2016 IRS Form 1040 U.S. Individual Income Tax Return with the Internal Revenue Service Center at Louisville, Kentucky (the "2016 Individual Return"). Copies of each of the following, all with matching U.S. Postal Service Article Tracking Number 7017 1450 0001 9772 6704, are attached hereto marked Exhibit E and made a part hereof:

- a. U.S. Postal Service Certified Mail Receipt USPS Form 3800 postmarked October 13, 2017; and
- b. Return Receipt USPS Form 3811 stamped received by the Louisville Service Center on October 17, 2017.

8. The 2016 Individual Return was timely filed because it was mailed on October 13, 2017, prior to the Extension due date of October 15, 2017 (October 16, 2017 for the 2016 tax year).

9. Plaintiff timely paid the total amount of federal income tax in the amount of \$164,206 shown on the 2016 Individual Return.

10. On October 7, 2020, Plaintiff timely filed the Plaintiff's Amended Return with the Internal Revenue Service Center in Kansas City, Missouri. Copies of each of the following, all with matching U.S. Postal Service Article Tracking Number 7020 1290 0000 6710 8740, are attached hereto marked Exhibit F and made a part hereof:

- a. U.S. Postal Service Certified Mail Receipt USPS Form 3800 postmarked October 7, 2020;
- b. credit card/cash register receipt showing postage paid to mail the return to the Kansas City Service Center dated October 7, 2020;
- c. Return Receipt USPS Form 3811 stamped received by the Kansas City Service Center on December 4, 2020 (the "Return Receipt Date"); and
- d. U.S. Postal Service tracking information showing the mailing date of October 7, 2020, and the receipt date at the Kansas City Service Center of October 11, 2020.

11. The Plaintiff's Amended Return was timely filed because it was properly mailed on October 7, 2020, and received by the IRS on October 11, 2022, prior to the October 13, 2020 due date of the Amended Return pursuant to 26 U.S.C. § 6511(a) and Treas. Regs. Sec. 301.6511(a)-1(a),

12. Plaintiff paid the total amount of federal income tax in the amount of \$164,206 shown on the 2016 Individual Return within the time frame set forth in 26 U.S.C. § 6511(b)(2)(A) and Treas. Regs. Sec. 301.6511(b)-1(b)(1)(i).

13. Part III-Explanation of Changes of Plaintiff's Amended Return set forth three reasons for why Plaintiff was filing Plaintiff's Amended Return:

- a. Plaintiff received an amended Schedule K-1 from EIN 56-1801617;
- b. Certain deductions were erroneously reduced twice on the Corporate Amended Return; and
- c. The amount of the Tax Credit was claimed.

14. EIN 56-1801617 is associated with Christopher H. Brown, BS Dent., DDS., a North Carolina professional corporation solely owned by Plaintiff and treated as an S corporation for federal tax purposes (the "Corporation").

15. On September 3, 2020, the Corporation timely filed an amended IRS Form 1120S U.S. Income Tax Return for an S Corporation for the tax year 2016 with the Internal Revenue Service Center at Cincinnati, Ohio (the "Corporate Amended Return"). A copy of the Corporate Amended Return is attached hereto, marked Exhibit G and made a part hereof. Copies of each of the following, all with matching U.S. Postal Service Article Tracking Number 7019 2970 0000 9688 7586, are attached hereto marked Exhibit H and made a part hereof:

- a. U.S. Postal Service Certified Mail Receipt USPS Form 3800 postmarked September 3, 2020;
- b. mailing envelope correctly addressed to the Cincinnati Service Center and postmarked September 3, 2020;
- c. credit card/cash register receipt showing postage paid to mail the return to the Cincinnati Service Center dated September 3, 2020; and
- d. Return Receipt USPS Form 3811 stamped received by the Cincinnati Service Center on September 8, 2020.

16. The Corporate Amended Return documented the Tax Credit on: (1) Schedule K Shareholders' Pro Rata Share Items--Line 13g Credits, with additional information provided on Statement #12; and (2) IRS Form 6765—Credit for Increasing Research Activities, Line 32.

17. The Corporate Amended Return Federal Supporting Statement #2 for Line 19—Other Deductions, “Form 6765 Credit Adjustment” properly removed the amount of the Tax Credit from the deductible items.

18. The Corporate Amended Return included an amended Schedule K-1 which set forth the Tax Credit on Part III, Line 13—Shareholder Share of Current Year Income, Deductions, Credits, and Other Income (the “Amended Schedule K-1). A copy of the Amended Schedule K-1 is attached hereto marked Exhibit I and made a part hereof.

19. The Corporation provided Plaintiff with a copy of the Amended Schedule K-1.

20. The Tax Credit claimed on the Plaintiff's Amended Return was the Tax Credit that was shown on the Amended Schedule K-1 and was set forth on Line 7 of the Amended Return.

21. The Tax Credit also was set forth on IRS Form 3800 General Business Credit which was filed with the Plaintiff's Amended Return.

22. The Corporate Amended Return erroneously deducted the amount of \$5,056 twice (the “Double Deduction”).

23. The Amended Return corrects the Double Deduction by decreasing the itemized deductions in the amount of the Double Deduction as shown on Line 2, Column B.

24. More than six months elapsed--specifically twenty-two months and ten days from October 7, 2020 to August 17, 2022--after Plaintiff filed the claim for refund without any action being taken by Defendant.

25. The sole reason set forth in the IRS Letter for disallowing Plaintiff's claim for refund was that such claim was filed more than three years after Plaintiff filed his 2016 tax return.

26. The IRS Letter erroneously states that the IRS received the Amended Return on November 19, 2020 (the "IRS Date").

27. The Return Receipt erroneously states that the IRS received the Amended Return on December 4, 2020.

28. The IRS Date is erroneous because United States Postal Service records show that the Amended Return was mailed on October 7, 2020, and that it was received by the IRS on October 11, 2020.

29. The Return Receipt Date is erroneous because United States Postal Service records show that the Amended Return was mailed on October 7, 2020, and that it was received by the IRS on October 11, 2020.

30. As reflected in Plaintiff's refund claim filed with the Internal Revenue Service on October 7, 2020, Plaintiff is entitled to for its 2016 tax year to the Tax Credit in the of \$63,769 and is entitled to a refund for its 2016 tax year of its overpayment of federal tax in the amount of \$63,769 as a result of the Tax Credit.

31. Plaintiff is entitled to recover attorneys' fees and costs in this case pursuant to 26 U.S.C. § 7430(a).

32. Plaintiff's administrative remedies within the Internal Revenue Service are deemed to have been exhausted because more than six months elapsed after Plaintiff filed the claim for refund without him receiving the notification required pursuant to Treas. Regs. Sec. 301.7430-1(f)(3)(iii) and Sec. 301.7430-1(g) Example 10.

CLAIM FOR RELIEF

33. Plaintiff incorporates by reference the allegations contained in the above paragraphs.

34. Plaintiff is entitled to a refund of \$63,769 in federal income tax, plus interest as allowed by law, for his 2016 tax year.

35. The Internal Revenue Service erred by allowing more than six months to elapse after Plaintiff filed the claim for refund without taking any action.

36. The Internal Revenue Service erred in disallowing Plaintiff's claim for a refund of federal income tax for the 2016 tax year.

37. Plaintiff is entitled to recover attorneys' fees and costs incurred in bringing this action.

38. Accordingly, Plaintiff seeks recovery of the overpayment of \$63,769 of federal income tax that was erroneously assessed and collected by Defendant, plus interest as allowed by law, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment against Defendant awarding Plaintiff:

- a. A refund of overpaid tax for the 2016 tax year of at least \$63,769, or such other amount as may be legally refundable;
- b. Interest as allowed by law;
- c. Attorneys' fees and costs;
- d. A trial by jury on all issues so triable; and
- e. Such other relief as Plaintiff may be entitled to receive.

This the 19th day of December, 2022.

JAMES, McELROY & DIEHL, P.A.

/s/ Fred B. Monroe

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